

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (Amendment)

5 907 KAR 1:145. Supports for community living services for an individual with an intel-
6 lectual or~~[mental retardation or a]~~ developmental disability.

7 RELATES TO: KRS 205.520, 205.5605, 205.5606, 205.5607, 42 C.F.R. 441 Subpart
8 G, 42 U.S.C. 1396a, b, d, n

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3),
10 205.5606(1), 205.6317

11 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
12 Services, Department for Medicaid Services, has responsibility to administer the Medi-
13 caid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to
14 comply with any requirement that may be imposed, or opportunity presented, by federal
15 law to qualify for federal Medicaid funds~~[for the provision of medical assistance to Ken-~~
16 ~~tucky's indigent citizenry]~~. KRS 205.5606(1) requires the cabinet to promulgate adminis-
17 trative regulations to establish a consumer-directed services program to provide an op-
18 tion for the home and community based services waivers. This administrative regulation
19 establishes the coverage provisions relating to home and community-based services
20 provided to an individual with an intellectual or~~[mental retardation or a]~~ developmental
21 disability as an alternative to placement in an intermediate care facility for an individual

1 with an intellectual or~~mental retardation or a~~ developmental disability, including a con-
2 sumer directed option pursuant to KRS 205.5606. The policies shall apply to supports
3 for community living (SCL) waiver service providers who provide services and SCL
4 waiver service recipients who receive services pursuant to this administrative regulation.
5 A new SCL waiver program is being established pursuant to 907 KAR 12:010 which
6 establishes service and coverage policies for SCL waiver recipients which become ef-
7 fective when the recipient transitions to the new SCL waiver during the month of the re-
8 cipient's next birthday. Until an SCL waiver recipient transitions to the new SCL waiver
9 program, the service and coverage policies established in this administrative regulation
10 shall apply to the SCL waiver recipient and to any provider who provides SCL waiver
11 services to the SCL waiver recipient.

12 Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive
13 evaluation of abilities, needs, and services that is:

14 (a) Completed on a MAP-351; and

15 (b) Submitted to the department:

16 1. For a level of care determination; and

17 2. Annually thereafter.

18 (2) "Behavior intervention committee" or "BIC" means a group of individuals estab-
19 lished to evaluate the technical adequacy of a proposed behavior intervention for an
20 SCL recipient.

21 (3) "Behavior support specialist" means an individual who has a master's degree
22 from an accredited institution with formal graduate course work in a behavioral science
23 and at least one (1) year of experience in behavioral programming.

(4) "Blended services" means a nonduplicative combination of SCL waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 5 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(5) "Budget allowance" is defined by KRS 205.5605(1).

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS 319.053 or 319.056.

(7) "Consumer" is defined by KRS 205.5605(2).

(8) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waivers that allow recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(9) "Covered services and supports" is defined by KRS 205.5605(3).

(10) "DBHDID" means the Department for Behavioral Health, Developmental and Intellectual Disabilities.

(11) "DCBS" means the Department for Community Based Services.

(12)~~[(41)]~~ "Department" means the Department for Medicaid Services or its designee.

(13)~~[(42)]~~ "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable to an intellectual disability as defined in this section or a condition

1 related to an intellectual disability that results in:~~[mental retardation or related conditions~~
2 ~~that:]~~

3 1. ~~[Result in]~~ An impairment of general intellectual functioning and adaptive behavior
4 similar to that of a person with an intellectual disability~~[mental retardation]~~; and

5 2. Are a direct result of, or are influenced by, the person's ~~[substantial]~~ cognitive defi-
6 cits.

7 ~~[(13) "DMHMR" means the Department for Mental Health and Mental Retardation~~
8 ~~Services.]~~

9 (14) "DMR" means the Division of Mental Retardation in the Department for Behav-
10 ioral Health, Developmental and Intellectual Disabilities~~[Mental Health and Mental Re-~~
11 ~~tardation Services]~~.

12 (15) "Electronic signature" is defined by KRS 369.102(8).

13 (16) "Good cause" means a circumstance beyond the control of an individual that af-
14 fects the individual's ability to access funding or services, which includes:

15 (a) Illness or hospitalization of the individual which is expected to last sixty (60) days
16 or less;

17 (b) Death or incapacitation of the primary caregiver;

18 (c) Required paperwork and documentation for processing in accordance with Sec-
19 tion 2 of this administrative regulation has not been completed but is expected to be
20 completed in two (2) weeks or less;

21 (d) The individual or his or her legal representative has made diligent contact with a
22 potential provider to secure placement or access services but has not been accepted
23 within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(17) "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(18) "ICF ID" means an intermediate care facility for an individual with an intellectual or developmental disability~~["ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability].~~

(19) "Intellectual disability" or "ID" means a demonstration:

(a)1. Of significantly sub-average intellectual functioning and an intelligence quotient (IQ) of approximately seventy (70) or below; and

2. Of concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

a. Communication;

b. Self-care;

c. Home living;

d. Social or interpersonal skills;

e. Use of community resources;

f. Self-direction;

g. Functional academic skills;

h. Work;

i. Leisure; or

j. Health and safety; and

1 (b) Which occurred prior to the individual reaching eighteen (18) years of age.

2 (20) "Level of care determination" means a determination by the department that an
3 individual meets low-intensity or high-intensity patient status criteria in accordance with
4 907 KAR 1:022.

5 (21)~~[(20)]~~ "Licensed marriage and family therapist" or "LMFT" is defined by KRS
6 335.300(2).

7 (22)~~[(21)]~~ "Licensed professional clinical counselor" or "LPCC" is defined by KRS
8 335.500(3).

9 (23)~~[(22)]~~ "Medically necessary" or "medical necessity" means that a covered benefit
10 is determined to be needed in accordance with 907 KAR 3:130.

11 ~~[(23) "Mental retardation" means that a person has:~~

12 ~~(a) Significantly sub-average intellectual functioning;~~

13 ~~(b) An intelligence quotient of approximately seventy (70) or below;~~

14 ~~(c) Concurrent deficits or impairments in present adaptive functioning in at least two~~
15 ~~(2) of the following areas:~~

16 ~~1. Communication;~~

17 ~~2. Self-care;~~

18 ~~3. Home living;~~

19 ~~4. Social or interpersonal skills;~~

20 ~~5. Use of community resources;~~

21 ~~6. Self-direction;~~

22 ~~7. Functional academic skills;~~

23 ~~8. Work;~~

1 ~~9. Leisure; or~~

2 ~~10. Health and safety; and~~

3 ~~(d) Had an onset before eighteen (18) years of age.]~~

4 (24) "Occupational therapist" is defined by KRS 319A.010(3).

5 (25) "Occupational therapy assistant" is defined in KRS 319A.010(4).

6 (26) "Patient liability" means the financial amount an individual is required to contrib-
7 ute towards the cost of care in order to maintain Medicaid eligibility.

8 (27) "Physical therapist" is defined by KRS 27.010(2).

9 (28) "Physical therapist assistant" means a skilled health care worker who:

10 (a) Is certified by the Kentucky Board of Physical Therapy; and

11 (b) Performs physical therapy and related duties as assigned by the supervising
12 physical therapist.

13 (29) "Plan of Care" or "POC" means a written individualized plan developed by:

14 (a) An SCL recipient or an SCL recipient's legal representative;

15 (b) The case manager or support broker; and

16 (c) Any other person designated by the SCL recipient if the SCL recipient designates
17 any other person.

18 (30) "Psychologist" is defined by KRS 319.010(8).

19 (31) "Psychologist with autonomous functioning" means an individual who is licensed
20 in accordance with KRS 319.056.

21 (32) "Registered nurse" or "RN" means a person who is currently licensed as defined
22 in KRS 314.011(5), and who has one (1) year or more experience as a professional
23 nurse.

(33) "Representative" is defined in KRS 205.5605(6).

(34) "SCL intellectual disability~~[mental retardation]~~ professional" or "SCL IDP"~~["SCL MRP"]~~ means an individual who has at least one (1) year of experience working with persons with intellectual~~[mental retardation]~~ or developmental disabilities and:

(a) Is a doctor of medicine or osteopathy;

(b) Is a registered nurse; or

(c) Holds at least a bachelor's degree from an accredited institution in a human services field including sociology, special education, rehabilitation counseling, or psychology.

(35) "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(36) "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(37) "Social worker" means an individual licensed by the Kentucky Board of Social Work under KRS 335.080, 335.090, or 335.100.

(38) "Speech-language pathologist" is defined by KRS 334A.020(3).

(39) "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance and support to a consumer; and

(b) Assist the consumer in any other aspects of CDO.

(40) "Support spending plan" means a plan for a consumer that identifies:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

1 (d) Hours per month;

2 (e) Monthly pay;

3 (f) Taxes; and

4 (g) Budget allowance.

5 (41) "Supports for community living" or "SCL" means home and community-based
6 waiver services for an individual with an intellectual or~~[mental retardation or a]~~ develop-
7 mental disability.

8 Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to
9 receive a service in the SCL program, an individual shall:

10 (a) Be placed on the SCL waiting list in accordance with Section 7 of this administra-
11 tive regulation;

12 (b) Receive notification of potential SCL funding in accordance with Section 7 of this
13 administrative regulation;

14 (c) Meet ICF-MR-DD patient status requirements established in 907 KAR 1:022;

15 (d) Meet Medicaid eligibility requirements established in 907 KAR 1:605;

16 (e) Submit an application packet to the department which shall contain:

17 1. The Long Term Care Facilities and Home and Community Based Program Certifi-
18 cation Form, MAP-350;

19 2. The MAP-351 Assessment Form;

20 3. The results of a physical examination that was conducted within the last twelve
21 (12) months;

22 4. A MAP-10, statement of the need for long-term care services, which shall be
23 signed and dated by a physician or an SCL MRP and be less than one (1) year old;

- 1 5. The results of a psychological examination completed by a licensed psychologist
- 2 or psychologist with autonomous functioning;
- 3 6. A social case history which is less than one (1) year old;
- 4 7. A projection of the needed supports and a preliminary MAP-109 plan of care for
- 5 meeting those needs;
- 6 8. A MAP-24C documenting an individual's status change; and
- 7 9. A copy of the letter notifying the SCL recipient of an SCL funding allocation; and
- 8 (f) Receive notification of an admission packet approval from the department.
- 9 (2) To maintain eligibility as an SCL recipient:
- 10 (a) An individual shall be administered an NC-SNAP assessment by the department
- 11 in accordance with 907 KAR 1:155;
- 12 (b) An individual shall maintain Medicaid eligibility requirements established in 907
- 13 KAR 1:605; and
- 14 (c) An ICF-MR-DD level of care determination shall be performed by the department
- 15 at least once every twelve (12) months.
- 16 (3) An SCL waiver service shall not be provided to an SCL recipient who is receiving
- 17 a service in another Medicaid waiver program or is an inpatient of an ICF-MR-DD or
- 18 other facility.
- 19 (4) The department may exclude from receiving an SCL waiver service an individual
- 20 for whom the aggregate cost of SCL waiver services would reasonably be expected to
- 21 exceed the cost of ICF-MR-DD services.
- 22 (5) Involuntary termination and loss of an SCL waiver program placement shall be in
- 23 accordance with 907 KAR 1:563 and shall be initiated if:

1 (a) An individual fails to access an SCL waiver service within sixty (60) days of notifi-
2 cation of potential funding without good cause shown.

3 1. The individual or legal representative shall have the burden of documenting good
4 cause, including:

- 5 a. A statement signed by the recipient or legal representative;
- 6 b. Copies of letters to providers;
- 7 c. Copies of letters from providers; and
- 8 d. A copy of a transition plan for individuals residing in a facility.

9 2. Upon receipt of documentation of good cause, the department shall grant one (1)
10 extension in writing, which shall be:

- 11 a. Sixty (60) days for an individual who does not reside in a facility; or
- 12 b. The length of the transition plan, not to exceed one (1) year, and contingent upon
13 continued active participation in the transition plan for an individual who does reside in a
14 facility;

15 (b) An SCL recipient or legal representative fails to access the required service as
16 outlined in the plan of care for a period greater than sixty (60) consecutive days without
17 good cause shown.

18 1. The recipient or legal representative shall have the burden of providing documen-
19 tation of good cause including:

- 20 a. A statement signed by the recipient or legal representative;
- 21 b. Copies of letters to providers;
- 22 c. Copies of letters from providers; and
- 23 d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

- a. Sixty (60) days for an individual who does not reside in a facility; and
- b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;
- (c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or
- (d) An SCL recipient does not meet ICF-MR-DD patient status criteria.

(6) Involuntary termination of a service to an SCL recipient by an SCL provider shall require:

- (a) Simultaneous notice to the SCL recipient or legal representative, the case manager or support broker, the department, and DMR at least thirty (30) days prior to the effective date of the action, which shall include:
 - 1. A statement of the intended action;
 - 2. The basis for the intended action;
 - 3. The authority by which the action is taken; and
 - 4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;
- (b) Submittal of a MAP-24C to the department and to DMR at the time of the intended action; and
- (c) The case manager or support broker in conjunction with the provider to:
 - 1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;

2. Provide assistance to the SCL recipient in making contact with another SCL provider;
3. Arrange transportation for a requested visit to an SCL provider site;
4. Provide a copy of pertinent information to the SCL recipient or legal representative;
5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured;
6. Continue to provide supports until alternative services or another placement is secured; and
7. Provide assistance to ensure a safe and effective service transition.

(7) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider, to the department and to DMR.

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Non-CDO Provider Participation. (1) In order to provide a non-CDO SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:

- (a) Be certified by the department prior to the initiation of the service;
- (b) Be recertified at least annually by the department; and
- (c) Have a main office within the Commonwealth of Kentucky.

(2) An SCL provider shall comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR

1:673 and 902 KAR 20:078.

(3) An SCL provider shall have a governing body that shall:

(a) Be a legally constituted entity within the Commonwealth of Kentucky;

(b) Not contain a majority of owners;

(c) Be responsible for the overall operation of the organization that shall include:

1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;

2. Appointing and annually evaluating the executive director;

3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;

4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and

5. Orienting a new member of the governing body to the operation of the organization, including the roles and responsibilities of board members.

(4) An SCL provider shall:

(a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient:

1. Child;

2. Parent;

3. Sibling; or

1 4. Spouse;

2 (b) Not enroll an SCL recipient for whom they cannot meet the support needs;

3 (c) Have and follow written criteria that comply with this administrative regulation for
4 determining the eligibility of an individual for admission to services; and

5 (d) Document any denial for a service and the reason for the denial, and identify re-
6 sources necessary to successfully support the denied SCL recipient in the community.

7 (5) An SCL provider shall maintain documentation of its operations which shall in-
8 clude:

9 (a) An annual review of written policy and procedures;

10 (b) A written description of available SCL waiver services;

11 (c) A current table of organization;

12 (d) A memorandum of understanding with an SCL case management provider with
13 whom they share plans of care;

14 (e) Information regarding satisfaction of an SCL recipient and the utilization of that in-
15 formation;

16 (f) A quality improvement program; and

17 (g) Documentation of achievement of outcomes based on best practice standards as
18 approved by the department.

19 (6) An SCL provider shall:

20 (a) Maintain accurate fiscal information which shall include documentation of revenue
21 and expenses;

22 (b) Maintain a written schedule of policy relevant to rates and charges that shall be
23 available to any individual upon request;

(c) Meet the following requirements if responsible for the management of SCL recipient funds:

1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;

2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and

3. The SCL recipient or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(7) An SCL provider shall have a written statement of its mission and values, which shall:

(a) Support empowerment and informed decision-making;

(b) Support and assist people to remain connected to natural support networks; and

(c) Promote dignity and self-worth.

(8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction by direct care staff;

(c) Require prompt notification of any unusual occurrence;

(d) Require visitation to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient's right of privacy;

(e) Require involvement in decision making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of

the family being supported.

(9) An SCL provider shall ensure the rights of an SCL recipient by:

(a) Making available a description of the rights and the means by which they can be exercised and supported which shall include:

1. The right to time, space, and opportunity for personal privacy;

2. The right to communicate, associate and meet privately with the person of choice;

3. The right to send and receive unopened mail;

4. The right to retain and use personal possessions including clothing and grooming articles; and

5. The right to private, accessible use of the telephone;

(b) Having a grievance and appeals system that includes an external mechanism for review of complaints; and

(c) Complying with the Americans with Disabilities Act (28 C.F.R. 35).

(10)(a) An SCL provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that:

1. A covered service is provided; or

2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one (21);

(b) All records and incident reports shall be made available to the:

1. department;

2. DBHDID~~[DMHMR]~~ or its designee;

3. Cabinet for Health and Family Services, Office of Inspector General or its designee;

1 4. General Accounting Office or its designee;

2 5. Office of the Auditor of Public Accounts or its designee;

3 6. Office of the Attorney General or its designee;

4 7. DCBS; or

5 8. Centers for Medicare and Medicaid Services.

6 (11) An SCL provider shall cooperate with monitoring visits from monitoring agents.

7 (12) An SCL provider shall maintain a record for each SCL recipient served that shall:

8 (a) Be recorded in permanent ink;

9 (b) Be free from correction fluid;

10 (c) Have a strike through each error that is initialed and dated; and

11 (d) Contain no blank lines in between each entry.

12 (13) A record of each SCL recipient who is served shall:

13 (a) Contain all information necessary for the delivery of the SCL recipient's services;

14 (b) Be cumulative;

15 (c) Be readily available;

16 (d) Contain documentation which meets the requirements of Section 4 of this admin-
17 istrative regulation;

18 (e) Contain the following specific information:

19 1. The SCL recipient's name, Social Security number and Medicaid identification
20 number (MAID);

21 2. The intake or face sheet;

22 3. The MAP-351 Assessment form completed at least annually;

23 4. The current plan of care;

- 1 5. The training objective for any support which facilitates achievement of the SCL re-
- 2 cipient's chosen outcomes;
- 3 6. A list containing emergency contact telephone numbers;
- 4 7. The SCL recipient's history of allergies with appropriate allergy alerts for severe al-
- 5 lergies;
- 6 8. The SCL recipient's medication record, including a copy of the prescription or the
- 7 signed physician's order and the medication log if medication is administered at the ser-
- 8 vice site;
- 9 9. A recognizable photograph of the SCL recipient;
- 10 10. Legally-adequate consent, updated annually, and a copy of which is located at
- 11 each service site for the provision of services or other treatment requiring emergency at-
- 12 tention;
- 13 11. The individual educational plan (IEP) or individual family service plan (IFSP), if
- 14 applicable;
- 15 12. The SCL recipient's social history updated at least annually;
- 16 13. The results of an annual physical exam;
- 17 14. The Long Term Care Facilities and Home and Community Based Program Certi-
- 18 fication Form, MAP-350 updated annually;
- 19 15. Psychological evaluation;
- 20 16. Current level of care certification; and
- 21 17. The MAP-552K, Department for Community Based Services Notice of Availability
- 22 for Long Term Care/Waiver Agency/Hospice Form in the case management and resi-
- 23 dential record;

1 (f) Be maintained by the provider in a manner to ensure the confidentiality of the SCL
2 recipient's record and other personal information and to allow the SCL recipient or legal
3 representative to determine when to share the information as provided by law;

4 (g) Have the safety from loss, destruction or use by an unauthorized person ensured
5 by the provider;

6 (h) Be available to the SCL recipient or legal guardian according to the provider's
7 written policy and procedures which shall address the availability of the record; and

8 (i) Have a corresponding legend which the provider shall make readily accessible.

9 (14) An SCL provider shall:

10 (a)1. Ensure that each new staff or volunteer performing direct care or a supervisory
11 function has had a tuberculosis (TB) risk assessment performed by a licensed medical
12 professional and, if indicated, a TB skin test with a negative result within the past twelve
13 (12) months as documented on test results received by the provider within seven (7)
14 days of the date of hire or date the individual began serving as a volunteer;

15 2. For existing staff, maintain documentation of each staff person's or if a volunteer
16 performs direct care or a supervisory function, the volunteer's annual TB risk assess-
17 ment or negative tuberculosis test;

18 3.a. Ensure that an employee or volunteer who tests positive for TB or has a history
19 of positive TB skin test shall be assessed annually by a licensed medical professional
20 for signs or symptoms of active disease; and

21 b. If it is determined that signs or symptoms of active disease are present, in order for
22 the person to be allowed to work or volunteer he or she shall be administered follow-up
23 testing by his or her physician with the testing indicating the person does not have ac-

1 tive TB disease; and

2 4. Maintain annual documentation for an employee or volunteer with a positive TB
3 test to ensure no active disease symptoms are present;

4 (b) Have written personnel guidelines for each employee to include:

5 1. Salary range;

6 2. Vacation and leave procedures;

7 3. Health insurance;

8 4. Retirement benefits;

9 5. Opportunity for continuing education; and

10 6. Grievance procedures;

11 (c) Provide a written job description for each staff person which describes the em-
12 ployee's duties and responsibilities;

13 (d) Annually review each job description;

14 (e) For each potential employee obtain:

15 1. Prior to employment, the results of a criminal record check from the Kentucky Ad-
16 ministrative Office of the Courts or equivalent out-of-state agency if the individual resid-
17 ed or worked outside of Kentucky during the year prior to employment;

18 2. Within thirty (30) days of the date of hire, the results of a central registry check as
19 described in 922 KAR 1:470; and

20 3. Prior to employment, the results of a nurse aide abuse registry check as described
21 in 906 KAR 1:100;

22 (f) Annually, for twenty-five (25) percent of employees randomly selected, obtain the
23 results of a criminal record check from the Kentucky Administrative Office of the Courts

or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

(g) For a volunteer expected to perform direct care or a supervisory function obtain:

1. Prior to the date the individual began serving as a volunteer, the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

2. Within thirty (30) days of the date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to the date the individual began serving as a volunteer, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;

(h) Annually, for twenty-five (25) percent of volunteers randomly selected, performing direct care staff or a supervisory function, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts or equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

(i) Not employ or place an individual as a volunteer who:

1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);

2. Has a prior felony conviction;

3. Has a conviction of abuse or sale of illegal drugs during the past five (5) years;

4. Has a conviction of abuse, neglect or exploitation;

5. Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or

6. Is listed on the nurse aide abuse registry;

(j) Not permit an employee or volunteer to transport an SCL recipient if the individual has a driving under the influence (DUI) conviction during the past year; and

(k) Evaluate the performance and competency of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.

(15) An SCL provider shall have:

(a) An executive director who:

1.a. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; or

b. Is a registered nurse; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with an intellectual or~~mental retardation or a~~ developmental disability;

(b) A program director of the SCL waiver program who:

1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with intellectual~~mental retardation~~ or developmental disabilities;

2. Is an SCL MRP; and

3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;

(c) Adequate direct-contact staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

1 b.(i) Is at least twenty-one (21) years old; and

2 (ii) Is able to adequately communicate with recipients and staff;

3 2. Has a valid Social Security number or valid work permit if not a U.S. citizen;

4 3. Can understand and carry out instructions; and

5 4. Has ability to keep simple records; and

6 (d) Adequate supervisory staff who:

7 1.a.(i) Is eighteen (18) years or older; and

8 (ii) Has a high school diploma or GED; or

9 b.(i) Is at least twenty-one (21) years old; and

10 (ii) Has a minimum of one (1) year experience in providing services to individuals with

11 an intellectual~~[mental retardation]~~ or developmental disability;

12 2. Is able to adequately communicate with the recipients, staff, and family members;

13 3. Has a valid Social Security number or valid work permit if not a U.S. citizen; and

14 4. Has ability to perform required record keeping.

15 (16) An SCL provider shall establish written guidelines that address the health, safety
16 and welfare of an SCL recipient, which shall include:

17 (a) Ensuring the health, safety and welfare of the SCL recipient;

18 (b) Maintenance of sanitary conditions;

19 (c) Ensuring each site operated by the provider is equipped with:

20 1. An operational smoke detector placed in strategic locations; and

21 2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic loca-
22 tions; one (1) of which shall be capable of extinguishing a grease fire and have a rating
23 of 1A10BC;

1 (d) Ensuring the availability of an ample supply of hot and cold running water with the
2 water temperature at a tap used by an SCL recipient not exceeding 120 degrees Fahr-
3 enheit;

4 (e) Establishing written procedures concerning the presence of deadly weapons as
5 defined in KRS 500.080 which shall ensure:

6 1. Safe storage and use; and

7 2. That firearms and ammunition are permitted:

8 a. Only in a family home provider or an adult foster care home; and

9 b. Only if stored separately and under double lock;

10 (f) Establishing written procedures concerning the safe storage of common house-
11 hold items;

12 (g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with
13 the current recommended dietary allowance of the Food and Nutrition Board of the Na-
14 tional Research Council or as specified by a physician;

15 (h) Ensuring that staff administering medication:

16 1. Unless the employee is a licensed or registered nurse, have specific training pro-
17 vided by a licensed medical professional per a DMR-approved curriculum and docu-
18 mented competency on medication administration, medication cause and effect and
19 proper administration and storage of medication; and

20 2. Document all medication administered, including self-administered, over-the-
21 counter drugs, on a medication log, with the date, time, and initials of the person who
22 administered the medication and ensure that the medication shall:

23 a. Be kept in a locked container;

- 1 b. If a controlled substance, be kept under double lock;
- 2 c. Be carried in a proper container labeled with medication and dosage and accom-
- 3 pany and be administered to an SCL recipient at a program site other than his or her
- 4 residence if necessary; and
- 5 d. Be documented on a medication administration form and properly disposed of, if
- 6 discontinued; and
- 7 (i) Policy and procedures for ongoing monitoring of medication administration.
- 8 (17) An SCL provider shall establish and follow written guidelines for handling an
- 9 emergency or a disaster which shall:
- 10 (a) Be readily accessible on site;
- 11 (b) Include instruction for notification procedures and the use of alarm and signal sys-
- 12 tems to alert an SCL recipient according to his or her disability;
- 13 (c) Include an evacuation drill to be conducted in three (3) minutes or less, docu-
- 14 mented at least quarterly and scheduled to include a time when an SCL recipient is
- 15 asleep; and
- 16 (d) Mandate that the result of an evacuation drill be evaluated and modified as need-
- 17 ed.
- 18 (18) An SCL provider shall:
- 19 (a) Provide orientation for each new employee which shall include the mission, goals,
- 20 organization, and practice of the agency;
- 21 (b) Provide or arrange for the provision of competency-based training to each em-
- 22 ployee to teach and enhance skills related to the performance of their duties;
- 23 (c) Require documentation of all training which shall include:

1 1. The type of training provided:

2 2. The name and title of the trainer;

3 3. The length of the training;

4 4. The date of completion; and

5 5. The signature of the trainee verifying completion;

6 (d) Ensure that each employee prior to independent functioning, completes training
7 which shall include:

8 1. Unless the employee is a licensed or registered nurse, first aid, which shall be pro-
9 vided by an individual certified as a trainer by the American Red Cross or other national-
10 ly-accredited organization;

11 2. Cardiopulmonary resuscitation which shall be provided by an individual certified as
12 a trainer by the American Red Cross or other nationally-accredited organization;

13 3. Crisis prevention and management;

14 4. Identification and prevention of abuse, neglect, and exploitation;

15 5. Rights of individuals with disabilities; and

16 6. Individualized instruction on the needs of the SCL recipient to whom the trainee
17 provides supports;

18 (e) Ensure that each employee that will be administering medications, prior to inde-
19 pendent functioning, completes training which shall include:

20 1. Medication administration training per cabinet-approved curriculum;

21 2. Medications and seizures;

22 3. First aid, which shall be provided by an individual certified as a trainer by the
23 American Red Cross or other nationally-accredited organization;

1 4. Cardiopulmonary resuscitation which shall be provided by an individual certified as
2 a trainer by the American Red Cross or other nationally-accredited organization;

3 5. Crisis prevention and management;

4 6. Identification and prevention of abuse, neglect, and exploitation;

5 7. Rights of individuals with disabilities; and

6 8. Individualized instruction on the needs of the SCL recipient to whom the trainee
7 provides supports;

8 (f) Ensure that all employees complete core training, consistent with a DBHDID-
9 approved~~[DMHMR-approved]~~ curriculum, no later than six (6) months from the date of
10 employment, which shall include:

11 1. Values, attitudes, and stereotypes;

12 2. Building community inclusion;

13 3. Person-centered planning;

14 4. Positive behavior support;

15 5. Human sexuality and persons with disabilities;

16 6. Self determination; and

17 7. Strategies for successful teaching;

18 (g) Not be required to receive the training specified in this section if the provider is:

19 1. An occupational therapist providing occupational therapy;

20 2. A physical therapist providing physical therapy;

21 3. A psychologist or psychologist with autonomous functioning providing psychologi-
22 cal services; or

23 4. A speech-language pathologist providing speech therapy;

(h) Ensure that an individual volunteer performing a direct care staff or a supervisory function receives training prior to working independently, which shall include:

1. Orientation to the agency;
2. Individualized instruction on the needs of the SCL recipient to whom the volunteer provides support;
3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and
4. Cardiopulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

(i) Ensure that each new case manager hired complete DMR-approved case management training within The first six (6) months from the date of hire.

Section 4. Non-CDO Covered Services. (1) A non-CDO SCL waiver service shall:

- (a) Be prior authorized by the department; and
- (b) Be provided pursuant to the plan of care.

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:

(a) Adult day training which shall:

1. Support the SCL recipient to participate in daily meaningful routines in the community;
2. Stress training in:
 - a. The activities of daily living;
 - b. Self-advocacy;
 - c. Adaptive and social skills; and

- d. Vocational skills;
- 3. Be provided in a nonresidential or community setting that may;
 - a. Be a fixed location; or
 - b. Occur in public venues.
- 4. Not be divers ional in nature;
- 5. Be provided as on-site services which shall:
 - a. Include facility-based services provided on a regularly-scheduled basis;
 - b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or
 - c. Prepare the participant for transition from school to work or adult support services;
- 6. Be provided as off-site services which:
 - a. Shall include services provided in a variety of community settings;
 - b. Shall provide access to community-based activities that cannot be provided by natural or other unpaid supports;
 - c. Shall be designed to result in increased ability to access community resources without paid supports;
 - d. Shall provide the opportunity for the participant to be involved with other members of the general population;
 - e. May be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;
 - f. May be provided as a mobile crew performing work in a variety of community busi- nesses or other community settings with supervision by the provider; and

- 1 g. May be provided as entrepreneurial or group approach to training for participants
- 2 to work in a small business created specifically by or for the recipient or recipients;
- 3 7. Ensure that any recipient performing productive work that benefits the organization
- 4 be paid commensurate with compensation to members of the general work force doing
- 5 similar work;
- 6 8. Require that a provider conduct an orientation informing the recipient of supported
- 7 employment and other competitive opportunities in the community at least annually;
- 8 9. Be provided at a time mutually agreed to by the recipient and provider;
- 9 10.a. Be provided to recipients age twenty-two (22) or older; or
- 10 b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition pro-
- 11 cess from school to work or adult support services;
- 12 11. Be documented by:
- 13 a. A time and attendance record which shall include
- 14 (i) The date of the service;
- 15 (ii) The beginning and ending time of the service;
- 16 (iii) The location of the service; and
- 17 (iv) The signature, date of signature, and title of the individual providing the service;
- 18 and
- 19 b. A detailed monthly summary staff note which shall include:
- 20 (i) The month, day, and year for the time period covered by each note written;
- 21 (ii) Progression, regression, and maintenance toward outcomes identified in the plan
- 22 of care; and
- 23 (iii) The signature, date of signature, and title of individual preparing the summary

1 staff note;

2 12. Be limited to five (5) days per week, 255 days maximum per year;

3 13. Not exceed eight (8) hours per day, five (5) days per week; and

4 14. Not exceed sixteen (16) hours per day if provided in combination with community
5 living supports or supported employment;

6 (b) An assessment service including a comprehensive assessment which shall:

7 1. Identify an SCL recipient's needs and the services that the SCL recipient or his or
8 her family cannot manage or arrange for on his or her behalf;

9 2. Evaluate an SCL recipient's physical health, mental health, social supports, and
10 environment;

11 3. Be requested by an individual requesting SCL services or a family or legal repre-
12 sentative of the individual;

13 4. Be conducted within seven (7) calendar days of receipt of the request for assess-
14 ment;

15 5. Include at least one (1) face-to-face contact with the SCL recipient and, if appro-
16 priate, his or her family by the assessor in the SCL recipient's home; and

17 6. Not be reimbursable if the individual does not receive a level of care certification;

18 (c) A reassessment service which shall:

19 1. Determine the continuing need for SCL waiver services;

20 2. Be performed at least every twelve (12) months;

21 3. Be conducted using the same procedures as for an assessment service;

22 4. Be conducted by a SCL case manager or support broker and submitted to the de-
23 partment no more than three (3) weeks prior to the expiration of the current level of care

certification to ensure that certification is consecutive;

5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and

6. Not be retroactive;

(d) Behavioral support which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the SCL recipient's behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Be implemented by SCL provider staff in all relevant environments and activities;

c. Be revised as necessary;

d. Define the techniques and procedures used;

1 e. Be designed to equip the recipient to communicate his or her needs and to partici-
2 pate in age-appropriate activities;

3 f. Include the hierarchy of behavior interventions ranging from the least to the most
4 restrictive;

5 g. Reflect the use of positive approaches; and

6 h. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, ver-
7 bal abuse, and any procedure which denies private communication, requisite sleep,
8 shelter, bedding, food, drink, or use of a bathroom facility;

9 5. Include the provision of training to other SCL providers concerning implementation
10 of the behavioral support plan;

11 6. Include the monitoring of an SCL recipient's progress which shall be accomplished
12 through:

13 a. The analysis of data concerning the frequency, intensity, and duration of a behav-
14 ior; and

15 b. The reports of an SCL provider involved in implementing the behavioral support
16 plan;

17 7. Provide for the design, implementation, and evaluation of systematic environmen-
18 tal modifications;

19 8. Be provided by a behavior support specialist who shall have:

20 a. A master's degree with formal graduate course work in a behavioral science; and

21 b. One (1) year of experience in behavioral programming;

22 9. Be documented by a detailed staff note which shall include:

23 a. The date of the service;

1 b. The beginning and ending time; and

2 c. The signature, date of signature and title of the behavioral specialist; and

3 10. Be limited to ten (10) hours for an initial functional assessment and six (6) hours
4 for the initial development of the behavior support plan and staff training;

5 (e) Case management which shall include:

6 1. Initiation, coordination, implementation, and monitoring of the assessment, reas-
7 sessment, evaluation, intake, and eligibility process;

8 2. Assisting an SCL recipient in the identification, coordination, and arrangement of
9 the support team and support team meetings;

10 3. Assisting an SCL recipient and the support team to develop, update, and monitor
11 the plan of care which shall:

12 a. Be initially developed within thirty (30) days of the initiation of the service using
13 person-centered guiding principles;

14 b. Be updated at least annually or as changes occur;

15 c. Be submitted on the MAP-351; and

16 d. Include any modification to the plan of care and be sent to the department within
17 fourteen (14) days of the effective date that the change occurs with the SCL recipient;

18 4. Assisting an SCL recipient in obtaining a needed service outside those available
19 by the SCL waiver utilizing referrals and information;

20 5. Furnishing an SCL recipient and legal representative with a listing of each availa-
21 ble SCL provider in the service area;

22 6. Maintaining documentation signed by an SCL recipient or legal representative of
23 informed choice of an SCL provider and of any change to the selection of an SCL pro-

vider and the reason for the change;

7. Timely distribution of the plan of care, crisis prevention plan, assessment, and other documents to chosen SCL service providers;

8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;

9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:

a. Individual-specific;

b. Annually reviewed; and

c. Updated as a change occurs;

10. Assisting an SCL recipient in planning resource use and assuring protection of resources;

11. Services that are exclusive of the provision of a direct service to an SCL recipient;

12. Monthly face-to-face contact with an SCL recipient;

13. Monitoring the health, safety, and welfare of an SCL recipient;

14. Monitoring all of the supports provided to an SCL recipient;

15. Notifying the local DCBS office, the department and DMR on a MAP-24C form if an SCL recipient is:

a. Terminated from the SCL Waiver Program;

b. Admitted to an ICF-MR-DD;

c. Admitted to a hospital;

d. Transferred to another Medicaid Waiver Program; or

e. Moved to another SCL residence;

1 16. Establishing a human rights committee which shall:

2 a. Include an:

3 (i) SCL recipient;

4 (ii) Individual not affiliated with the SCL provider; and

5 (iii) Individual who has knowledge and experience in rights issues;

6 b. Review and approve, prior to implementation and at least annually thereafter, all
7 plans of care with rights restrictions;

8 c. Review and approve prior to implementation and at least annually thereafter, in
9 conjunction with the SCL recipient's team, behavior support plans that include highly-
10 restrictive procedures or contain rights restrictions; and

11 d. Review the use of a psychotropic medication by an SCL recipient without an Axis I
12 diagnosis;

13 17. Establishing a behavior intervention committee which shall:

14 a. Include one (1) individual who has expertise in behavior intervention and is not the
15 behavior specialist who wrote the behavior support plan;

16 b. Be separate from the human rights committee;

17 c. Review and approve prior to implementation and at least annually thereafter or as
18 changes are needed, in conjunction with the SCL recipient's team, all behavior support
19 plans; and

20 d. Review the use of a psychotropic medication by an SCL recipient without an Axis I
21 diagnosis and recommend an alternative intervention if appropriate;

22 18. Documentation with a monthly summary note which shall include:

23 a. Documentation of monthly contact with each chosen SCL provider which shall in-

1 clude monitoring of the delivery of services and the effectiveness of the plan of care;

2 b. Documentation of monthly face-to-face contact with an SCL recipient; and

3 c. Progress towards outcomes identified in the plan of care;

4 19. Provision by a case manager who shall:

5 a. Have a bachelor's degree from an accredited institution in a human services field;

6 b. Be a registered nurse;

7 c. Be a qualified social worker;

8 d. Be a licensed marriage and family therapist;

9 e. Be a professional clinical counselor;

10 f. Be a certified psychologist; or

11 g. Be a licensed psychological practitioner;

12 20. Supervision by a case management supervisor who shall be an SCL MRP; and

13 21. Documentation with a detailed monthly summary note which shall include:

14 a. The month, day, and year for the time period each note covers;

15 b. Progression, regression, and maintenance toward outcomes identified in the plan
16 of care; and

17 c. The signature, date of signature, and title of the individual preparing the note;

18 (f) Children's day habilitation which shall be:

19 1. The provision of support, training, and intervention in the areas of:

20 a. Self-care;

21 b. Sensory/motor development;

22 c. Daily living skills;

23 d. Communication; and

- 1 e. Adaptive and social skills;
- 2 2. Provided in a nonresidential or community setting;
- 3 3. Provided to enable the recipient to participate in and access community resources;
- 4 4. Provided to help remove or diminish common barriers to participation in typical
- 5 roles in community life;
- 6 5. Provided at a time mutually agreed upon by the recipient and provider;
- 7 6. Limited to:
- 8 a. Individuals who are in school and up to sixteen (16) years of age;
- 9 b. Up to eight (8) hours per day, five (5) days per week; and
- 10 c. Up to sixteen (16) hours per day in combination with community living supports;
- 11 and
- 12 7. Documented by:
- 13 a. A time and attendance record which shall include:
- 14 (i) The date of service;
- 15 (ii) The beginning and ending time of the service;
- 16 (iii) The location of the service; and
- 17 (iv) The signature, date of signature, and title of the individual providing the service;
- 18 and
- 19 b. A detailed monthly staff note which shall include:
- 20 (i) The month, day, and year for the time period each note covers;
- 21 (ii) Progression, regression, or maintenance of outcomes identified in the plan of
- 22 care; and
- 23 (iii) The signature, date of signature, and title of the individual preparing the summary

1 staff note;

2 (g) Community living supports which shall:

3 1. Be provided to facilitate independence and promote integration into the community
4 for an SCL recipient residing in his or her own home or in his or her family's home;

5 2. Be supports and assistance which shall be related to chosen outcomes and not be
6 divers ional in nature. This may include:

7 a. Routine household tasks and maintenance;

8 b. Activities of daily living;

9 c. Personal hygiene;

10 d. Shopping;

11 e. Money management;

12 f. Medication management;

13 g. Socialization;

14 h. Relationship building;

15 i. Leisure choices;

16 j. Participation in community activities;

17 k. Therapeutic goals; or

18 l. Nonmedical care not requiring nurse or physician intervention;

19 3. Not replace other work or day activities;

20 4. Be provided on a one-on-basis;

21 5. Not be provided at an adult day-training or children's day- habilitation site;

22 6. Be documented by:

23 a. A time and attendance record which shall include:

- (i) The date of the service;
- (ii) The beginning and ending time of the service; and
- (iii) The signature, date of signature and title of the individual providing the service;
- and
- b. A detailed monthly summary note which shall include:
 - (i) The month, day and year for the time period each note covers;
 - (ii) Progression, regression and maintenance toward outcomes identified in the plan of care; and
 - (iii) The signature, date of signature and title of the individual preparing the summary note; and
7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;
- (h) Occupational therapy which shall be:
 1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;
 2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;
 3. Training of other SCL providers on improving the level of functioning;
 4. Exclusive of maintenance or the prevention of regression;
 5. Provided by an occupational therapist or an occupational therapy assistant supervised by an occupational therapist in accordance with 201 KAR 28:130; and
 6. Documented by a detailed staff note which shall include:

- a. Progress toward outcomes identified in the plan of care;
 - b. The date of the service;
 - c. Beginning and ending time; and
 - d. The signature, date of signature and title of the individual providing the service;
- (i) Physical therapy which shall be:
1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;
 2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;
 3. Training of another SCL provider on improving the level of functioning;
 4. Exclusive of maintenance or the prevention of regression;
 5. Provided by a physical therapist or a physical therapist assistant supervised by a physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and
 6. Documented by a detailed staff note which shall include:
 - a. Progress made toward outcomes identified in the plan of care;
 - b. The date of the service;
 - c. Beginning and ending time of the service; and
 - d. The signature, date of signature and title of the individual providing the service;
- (j) Psychological services which shall:
1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;
 2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;

1 3. Include:

2 a. The administration of psychological testing;

3 b. Evaluation;

4 c. Diagnosis; and

5 d. Treatment;

6 4. Be incorporated into the plan of care with input from the psychological service pro-
7 vider for the development of program-wide support;

8 5. Be provided by a psychologist or a psychologist with autonomous functioning; and

9 6. Be documented by a detailed staff note which shall include:

10 a. The date of the service;

11 b. The beginning and ending time of the service; and

12 c. The signature, date of signature and title of the individual providing the service;

13 (k) Residential support service which shall:

14 1. Include twenty-four (24) hour supervision in:

15 a. A staffed residence which shall not have greater than three (3) recipients of public-
16 ly-funded supports in a home rented or owned by the SCL provider;

17 b. A group home which shall be licensed in accordance with 902 KAR 20:078 and
18 shall not have greater than eight (8) SCL recipients;

19 c. A family home provider which shall not have greater than three (3) recipients of
20 publicly-funded supports living in the home; or

21 d. An adult foster care home which shall not have greater than three (3) recipients of
22 publicly-funded supports aged eighteen (18) or over living in the home;

23 2. Utilize a modular home only if the:

- 1 a. Wheels are removed;
- 2 b. Home is anchored to a permanent foundation; and
- 3 c. Windows are of adequate size for an adult to use as an exit in the event of an
- 4 emergency;
- 5 3. Not utilize a motor home;
- 6 4. Provide a sleeping room which ensures that an SCL recipient:
- 7 a. Does not share a room with an individual of the opposite sex who is not the SCL
- 8 recipient's spouse;
- 9 b. Under the age of eighteen (18) does not share a room with an individual that has
- 10 an age variance of more than five (5) years;
- 11 c. Does not share a room with an individual who presents a potential threat; and
- 12 d. Has a separate bed equipped with substantial springs, a clean and comfortable
- 13 mattress and clean bed linens as required for the SCL recipient's health and comfort;
- 14 5. Provide assistance with daily living skills which shall include:
- 15 a. Ambulation;
- 16 b. Dressing;
- 17 c. Grooming;
- 18 d. Eating;
- 19 e. Toileting;
- 20 f. Bathing;
- 21 g. Meal planning and preparation;
- 22 h. Laundry;
- 23 i. Budgeting and financial matters;

- j. Home care and cleaning; or
- k. Medication management;
- 6. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the plan of care;
- 7. Provide or arrange for transportation to services, activities, and medical appointments as needed;
- 8. Include participation in medical appointments and follow-up care as directed by the medical staff; and
- 9. Be documented by a detailed monthly summary note which shall include:
 - a. The month, day, and year for the time period the note covers;
 - b. Progression, regression and maintenance toward outcomes identified in the plan of care;
 - c. Pertinent information regarding the life of the SCL recipient; and
 - d. The signature, date of signature, and title of the individual preparing the staff note;
- (l) Respite service which shall be:
 - 1. Provided only to an SCL recipient unable to independently administer self-care;
 - 2. Provided in a variety of settings;
 - 3. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;
 - 4. Provided only to an SCL recipient who resides in a family home provider, adult foster care home, or his or her own or family's home;
 - 5. Limited to 1440 hours per calendar year; and
 - 6. Documented by a detailed staff note which shall include:

- a. The date of the service;
 - b. The beginning and ending time; and
 - c. The signature, date of signature and title of the individual providing the service;
- (m) Specialized medical equipment and supplies which shall:
1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;
 2. Enable an SCL recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;
 3. Be ordered by a physician and submitted on a MAP-95;
 4. Include equipment necessary to the proper functioning of specialized items;
 5. Not be available through the department's durable medical equipment, vision, hearing, or dental programs;
 6. Meet applicable standards of manufacture, design and installation; and
 7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;
- (n) Speech therapy which shall be:
1. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;
 2. A physician ordered habilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;
 3. Training of other SCL providers on improving the level of functioning;
 4. Exclusive of maintenance or the prevention of regression;

- 1 5. Be provided by a speech-language pathologist; and
- 2 6. Documented by a detailed staff note which shall include:
 - 3 a. Progress toward outcomes identified in the plan of care;
 - 4 b. The date of the service;
 - 5 c. The beginning and ending time; and
 - 6 d. The signature, date of signature and title of the individual providing the service; or
 - 7 (o) Supported employment which shall be:
 - 8 1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an
 - 9 environment in which an individual without a disability is employed;
 - 10 2. Provided in a variety of settings;
 - 11 3. Provided on a one-to-one basis;
 - 12 4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29
 - 13 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which
 - 14 shall be documented in the SCL recipient's file;
 - 15 5. Exclusive of work performed directly for the supported employment provider;
 - 16 6. Provided by a staff person who has completed a supported employment training
 - 17 curriculum conducted by staff of the cabinet or its designee;
 - 18 7. Documented by:
 - 19 a. A time and attendance record with shall include:
 - 20 (i) The date of service;
 - 21 (ii) The beginning and ending time; and
 - 22 (iii) The signature, date of signature, and title of the individual providing the service;
 - 23 and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period the note covers;

(ii) Progression, regression and maintenance toward outcomes identified in the plan of care; and

(iii) The signature, date of signature and title of the individual preparing the note; and

8. Limited to forty (40) hours per week alone or in combination with adult day training.

Section 5. Consumer Directed Option. (1) Covered services and supports provided to an SCL recipient participating in CDO shall include:

(a) A home and community support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not be divers ional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services; and

5.a. Be respite for the primary caregiver; or

b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living;

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

1 (vi) Medication management;

2 (vii) Socialization;

3 (viii) Relationship building;

4 (ix) Leisure choices; or

5 (x) Participation in community activities;

6 (b) A community day support service which shall:

7 1. Be available only under the consumer directed option;

8 2. Be provided in a community setting;

9 3. Be tailored to the consumer's specific personal outcomes related to the acquisition,
10 improvement, and retention of skills and abilities to prepare and support the consumer
11 for work or community activities, socialization, leisure or retirement activities;

12 4. Be based upon therapeutic goals and not be divers ional in nature; and

13 5. Not be provided to an individual if the same or similar service is being provided to
14 the individual via non-CDO SCL services.

15 (c) Goods or services which shall:

16 1. Be individualized;

17 2. Be utilized to reduce the need for personal care or to enhance independence with-
18 in the home or community of the recipient;

19 3. Not include experimental goods or services; and

20 4. Not include chemical or physical restraints.

21 (2) To be covered, a CDO service shall be specified in a consumer's plan of care and
22 support spending plan.

23 (3) Reimbursement for a CDO service shall not exceed the department's allowed re-

1 imbursement for the same or a similar service provided in a non-CDO SCL setting.

2 (4) A consumer, including a married consumer, shall choose providers and a con-
3 sumer's choice of CDO provider shall be documented in the consumer's plan of care.

4 (5) A consumer may designate a representative to act on his or her behalf. The CDO
5 representative shall:

6 (a) Be twenty-one (21) years of age or older;

7 (b) Not be monetarily compensated for acting as the CDO representative or providing
8 a CDO service; and

9 (c) Be appointed by the consumer on a MAP-2000 form.

10 (6) A consumer may voluntarily terminate CDO services by completing a MAP-2000
11 and submitting it to the support broker.

12 (7) The department shall immediately terminate a consumer from CDO services if
13 Imminent danger to the consumer's health, safety, or welfare exists.

14 (8) The department may terminate a consumer from CDO services if it determines
15 that the consumer's CDO provider has not adhered to the plan of care.

16 (9) Prior to a consumer's termination from CDO services, the support broker shall:

17 (a) Notify the SCL assessment or reassessment service provider of potential termina-
18 tion;

19 (b) Assist the consumer in developing a resolution and prevention plan;

20 (c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to re-
21 solve the issue, develop and implement a prevention plan or designate a CDO repre-
22 sentative;

23 (d) Complete, and submit to the department and to DMR, a MAP-2000 terminating

1 the consumer from CDO services if the consumer fails to meet the requirements in par-
2 agraph (c) of this subsection; and

3 (e) Assist the consumer in transitioning back to traditional SCL services.

4 (10) Upon an involuntary termination of CDO services, the department shall:

5 (a) Notify a consumer in writing of its decision to terminate the consumer's CDO par-
6 ticipation; and

7 (b) Inform the consumer of the right to appeal the department's decision in accord-
8 ance with Section 9 of this administrative regulation.

9 (11) A CDO provider:

10 (a) Shall be selected by the consumer;

11 (b) Shall submit a completed Kentucky Consumer Directed Option Employee Provid-
12 er Contract to the support broker;

13 (c) Shall be eighteen (18) years of age or older;

14 (d) Shall be a citizen of the United States with a valid Social Security number or pos-
15 sess a valid work permit if not a US citizen;

16 (e) Shall be able to communicate effectively with the consumer, consumer repre-
17 sentative or family;

18 (f) Shall be able to understand and carry out instructions;

19 (g) Shall be able to keep records as required by the consumer;

20 (h) Shall submit to a criminal background check conducted by the Kentucky Adminis-
21 trative Office of the Courts or equivalent agency from any other state, for each state in
22 which the individual resided or worked during the year prior to selection as a provider of
23 CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

1. A consumer may employ a provider prior to a central registry check result being obtained for up to thirty (30) days; and

2. If a consumer does not obtain a central registry check result within thirty (30) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) Shall be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consum-

er's budget shall equal the average per capita historical costs of SCL recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare

(f) A consumer's budget shall not exceed the average per capita cost of services provided to individuals in an ICF-MR-DD.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

1 (15) A support broker shall:

2 (a) Provide needed assistance to a consumer with any aspect of CDO or blended
3 services;

4 (b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per
5 week;

6 (c) Comply with applicable federal and state laws and requirements;

7 (d) Continually monitor a consumer's health, safety, and welfare; and

8 (e) Complete or revise a plan of care using person-centered planning principles.

9 (16) For a CDO participant, a support broker may conduct an assessment or reas-
10 sessment.

11 Section 6. Incident Reporting Process. (1) An incident shall be documented on an in-
12 cident report form.

13 (2) There shall be three (3) classes of incidents including:

14 (a) A class I incident which shall:

15 1. Be minor in nature and not create a serious consequence;

16 2. Not require an investigation by the provider agency;

17 3. Be reported to the case manager or support broker within twenty-four (24) hours;

18 4. Be reported to the guardian as directed by the guardian; and

19 5. Be retained on file at the provider and case management or support brokerage
20 agency;

21 (b) A class II incident which shall:

22 1. Be serious in nature;

23 2. Involve the use of physical or chemical restraint;

1 3. Require an investigation which shall be initiated by the provider agency within
2 twenty-four (24) hours of discovery, and shall involve the case manager or support bro-
3 ker; and

4 4. Be reported by the provider agency to:

5 a. The case manager or support broker within twenty-four (24) hours of discovery;

6 b. The guardian within twenty-four (24) hours of discovery;

7 c. The assistant director of the Division of Mental Retardation, DBHDID~~[DMHMR]~~, or
8 designee, within ten (10) calendar days of discovery, and shall include a complete writ-
9 ten report of the incident investigation and follow up; and

10 (c) A class III incident which shall:

11 1.a. Be grave in nature;

12 b. Involve suspected abuse, neglect, or exploitation;

13 c. Involve a medication error which requires a medical intervention; or

14 d. Be a death;

15 2. Be immediately investigated by the provider agency, and the investigation shall in-
16 volve the case manager or support broker; and

17 3. Be reported by the provider agency to:

18 a. The case manager or support broker within eight (8) hours of discovery;

19 b. DCBS immediately upon discovery, if involving suspected abuse, neglect, or ex-
20 ploitation in accordance with KRS Chapter 209;

21 c. The guardian within eight (8) hours of discovery; and

22 d. The assistant director of the Division of Mental Retardation, DBHDID~~[DMHMR]~~, or
23 designee, within eight (8) hours of discovery and shall include a complete written report

of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMR shall occur on the following business day.

(3) The following documentation with a complete written report shall be submitted for a death:

(a) A current plan of care;

(b) A current list of prescribed medications including PRN medications;

(c) A current crisis plan;

(d) Medication Administration Review (MAR) forms for the current and previous month;

(e) Staff notes from the current and previous month including details of physician and emergency room visits;

(f) Any additional information requested by DBHDID~~[DMHMR]~~;

(g) A coroner's report when received; and

(h) If performed, an autopsy report when received.

(4) All medication errors shall be reported to the Assistant Director of the Division of Mental Retardation, DBHDID~~[DMHMR]~~, or designee on a monthly medication error report form by the 15th of the following month.

Section 7. SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.

(2) An individual shall be placed on the SCL waiting list based upon his or her region of origin in accordance with KRS 205.6317(3) and (4).

(3) In order to be placed on the SCL waiting list, an individual shall submit to the de-

partment a completed MAP-620, Application for MR-DD Services, which shall include the following:

(a) A signature from a physician or an SCL MRP indicating medical necessity;

(b) A current and valid MR/DD diagnosis, including supporting documentation to validate the diagnosis; and

(c) Completion of the Axis I, II, and III.

(4) DBHDID~~[DMHMR]~~ or its designee shall validate the MAP-620 application information.

(5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD shall be September 22, 1995 or the date of admission to the ICF-MR-DD, whichever is later, and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(7) The order of placement on the SCL waiting list for an individual not residing in an ICF-MR-DD shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual as follows:

(a) Emergency. The need shall be classified as emergency if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;

2. The death of the individual's primary caregiver and lack of alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:

- a. Loss of housing;
- b. Inappropriate hospitalization; or
- c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status;

5. The attainment of the age of twenty (20) years and six (6) months, for an individual in the custody of DCBS; or

6. Imminent or current institutionalization in an ICF-MR-DD;

(b) Urgent. The need shall be classified as urgent if a service is needed within one (1) year as determined by:

1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;

2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;

3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver; or

4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;

(c) Future planning. The need shall be classified as future planning if a service is needed in greater than one (1) year as determined by:

1 1. The individual is currently receiving a service through another funding source that
2 meets his or her needs;

3 2. The individual is not currently receiving a service and does not currently need the
4 service;

5 3. The individual is in the custody of DCBS and is less than twenty (20) years and six
6 (6) months of age; or

7 4. The individual is less than twenty-one (21) years of age.

8 (8) If multiple applications are received on the same arrival date, a lottery shall be
9 held to determine placement on the SCL waiting list within each category of need.

10 (9) A written notification of original placement on the SCL waiting list and any chang-
11 es due to reconsideration shall be mailed to an individual or his or her legal representa-
12 tive and case management provider if identified.

13 (10) In determining chronological status, the original date of receipt of a MAP- 620
14 shall be maintained and shall not change when an individual is moved from one (1) cat-
15 egory of need to another.

16 (11) Maintenance of the SCL waiting list shall occur as follows:

17 (a) Validation shall be completed based upon the chronological date of placement on
18 the SCL waiting list within each geographic region; and

19 (b)1. The department shall, at a minimum, annually update the waiting list during the
20 birth month of an individual.

21 2. The individual or his or her legal representative and case management provider
22 shall be contacted in writing to verify the accuracy of the information on the SCL waiting
23 list and his or her continued desire to pursue placement in the SCL program.

1 3. If a discrepancy is noted in diagnostic information at the time of the annual update,
2 the department may request a current diagnosis of MR/DD signed by a physician or
3 SCL MRP, including documentation supporting the diagnosis.

4 4. The requested data shall be received by the department within thirty (30) days
5 from the date of the letter.

6 (12) Reassignment of category of need shall be completed based on the updated in-
7 formation and validation process.

8 (13) An individual or his or her legal representative may submit a written request for
9 consideration of movement from one (1) category of need to another if there is a change
10 in status of the individual.

11 (14) If an individual on the SCL waiting list in the emergency category of need is
12 placed in an ICF-MR-DD, the category of need shall not change.

13 (15) The criteria for removal from the SCL waiting list shall be:

14 (a) After a documented attempt, the department is unable to locate the individual or
15 his or her legal representative;

16 (b) The individual is deceased;

17 (c) Review of documentation reveals that the individual does not have an intellectual
18 disability~~[a mental retardation]~~ diagnosis or a developmental disability diagnosis as de-
19 fined in Section 1 of this administrative regulation;

20 (d) Notification of potential SCL funding is made and the individual or his or her legal
21 representative declines the potential funding and does not request to be maintained on
22 the SCL waiting list; or

23 (e) Notification of potential SCL funding is made and the individual or his or her legal

representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date.

1. The individual or legal representative shall have the burden of providing documentation of good cause, including:

- a. A signed statement by the individual or the legal representative;
- b. Copies of letters to providers;
- c. Copies of letters from providers; and
- d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

- a. Sixty (60) days for an individual who does not reside in a facility; or
- b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.

(16) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:

- (a) The individual shall be moved to the future planning category; and
- (b) The chronological date shall remain the same.

(17) If an individual is removed from the SCL waiting list, the department shall mail written notification to the individual or his or her legal representative and the case management provider.

(18) The removal of an individual from the SCL waiting list shall not prevent the sub-

mittal of a new application at a later date.

(19) The SCL waiting list, excluding the emergency category, shall be fixed as it exists ninety (90) days prior to the expected date of offering a placement based upon the allocation of new funding and shall be resumed following the allocation of new funding.

(20) An individual shall be allocated potential funding based upon:

(a) His or her region of origin in accordance with KRS 205.6317(3) and (4);

(b) His or her category of need; and

(c) His or her chronological date of placement on the SCL waiting list.

(21) To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:

(a) The treatment professionals determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or his or her legal representative.

Section 8. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120, and all applicable state and federal statutes and regulations.

(2) A SCL service provider choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be adhered to by all of the provider's employees, officers, agents, and contractors;

2. Stipulate which individuals have access to each electronic signature and password authorization; and

3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(3) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

Section 9. Transition to New SCL Waiver. (1) The policies established in this administrative regulation shall apply to SCL waiver services provided:

(a) To an SCL waiver service recipient until the recipient transitions to the new SCL waiver program:

1. In accordance with 907 KAR 12:010; and

2. During the month of the SCL waiver recipient's next birthday; and

(b) By an SCL waiver service provider who provides a service to an SCL waiver service recipient who has not transitioned to the new SCL waiver service program established pursuant to 907 KAR 12:010.

(2) During the month of an SCL waiver recipient's next birthday, the SCL waiver recipient who remains approved to receive SCL waiver services shall:

(a) Transition to a new SCL waiver program; and

(b) Receive services in accordance with 907 KAR 12:010 rather than in accordance with this administrative regulation.

1 (3) The policies established in this administrative regulation shall become null and
2 void at the time that every eligible SCL waiver recipient served in accordance with this
3 administrative regulation:

4 (a) Has transitioned to the new SCL waiver program; and

5 (b) Receives SCL waiver services in accordance with the policies established in 907
6 KAR 12:010.

7 Section 10. Appeal Rights. (1) An appeal of a department decision regarding a Medi-
8 caid beneficiary based upon an application of this administrative regulation shall be in
9 accordance with 907 KAR 1:563.

10 (2) An appeal of a department decision regarding Medicaid eligibility of an individual
11 based upon an application of this administrative regulation shall be in accordance with
12 907 KAR 1:560.

13 (3) An appeal of a department decision regarding a provider based upon an applica-
14 tion of this administrative regulation shall be in accordance with 907 KAR 1:671.

15 (4) An individual shall not appeal a category of need specified in Section 7 of this
16 administrative regulation.

17 Section 11.~~[10.]~~ Incorporation by Reference. (1) "Supports for Community Living
18 Manual, October 2007 edition", is incorporated by reference.

19 (2) This material may be inspected, copied, or obtained, subject to applicable copy-
20 right law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,
21 Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (24 Ky.R. 1819; Am. 2126;
22 2384; eff. 5-18-98; 30 Ky.R. 732; 1770; eff. 1-15-2004; 32 Ky.R. 2169; 33 Ky.R. 486;
23 782; eff. 10-6-06; 34 Ky.R. 1556; eff. 428; 1021; 1453; eff. 1-4-2008.)

907 KAR 1:145

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on September 21, 2012 at 9:00 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by September 14, 2012 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business October 1, 2012. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, (502) 564-7905, Fax: (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 1:145

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact: Sheila Davis (502) 564-5560, Claudia Johnson (502) 564-7702, Karen Martin (502) 564-7540 or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the service and coverage policies for the current Medicaid Supports for Community Living (SCL) waiver program. The Department for Medicaid Services (DMS) is implementing a new version of the SCL waiver program. Service and coverage policies for the new version will be established in 907 KAR 12:010 and reimbursement policies will be established in 907 KAR 12:020. Individuals will transition from the current SCL waiver program to the new SCL waiver program during the month of the recipient's next birthday. The service and coverage policies established in this administrative regulation shall continue to apply to services provided to individuals receiving SCL waiver services under this regulation. At the time that all individuals have transitioned to the new SCL waiver program, this administrative regulation shall become null and void.
 - (b) The necessity of this administrative regulation: The administrative regulation is necessary to establish service and coverage policies for the original Medicaid SCL waiver program until individuals receiving services under the original SCL waiver program have transitioned to the new SCL waiver program.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid SCL waiver program service and coverage policies for the original SCL waiver program until individuals transition to the new SCL waiver program.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid SCL waiver program service and coverage policies for the original SCL waiver program until individuals transition to the new SCL waiver program.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment establishes that the policies established in this administrative regulation will apply to current SCL waiver participants until the individuals transition to the new SCL waiver program during the month of their next birthday. The policies established in a new SCL waiver service and coverage regulation (907 KAR 12:010) will apply to individuals once they transition to the new version of the waiver.

- (b) The necessity of the amendment to this administrative regulation: Due to the large number of SCL waiver program recipients – over, 3,500 individuals – DMS is unable to transition everyone to the new SCL waiver program concurrently; therefore, amending this regulation to establish a phased in approach is necessary.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by establishing a transition period from the current SCL waiver program to a new model of it.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Providers and recipients of SCL waiver services will be affected by the amendment. Currently, there are 202 SCL waiver service providers and as of July 1, 2012 there were 3,569 recipients in the SCL waiver program.
- (4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The current policies will continue to apply until an SCL waiver recipient transitions to the new waiver policies established in 907 KAR 12:010; thus, providers will need to follow the policies of this regulation for those still governed by it.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Providers will benefit by receiving reimbursement for services and recipients will benefit from the staggered phase in by being able to continue receiving SCL waiver services (under this regulation) rather than shutting down this current version and implementing the new version at once – forcing many to receive no SCL waiver services while they wait to be approved for the new version.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.
 - (b) On a continuing basis: The biennium budget allocated \$7,650,100 in state funds

to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund the this administrative regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied as the policies apply equally to the regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 1:145

Agency Contact: Sheila Davis (502) 564-5560, Claudia Johnson (502) 564-7702, Karen Martin (502) 564-7540 or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? The cost of the SCL waiver program to DMS for the state fiscal year that ended June 30, 2012, was \$264,720,472.60 (state and federal funds combined.) The biennium budget enacted during the 2012 session of the general assembly allocated \$2,200,000 in state funds (to be matched with \$5,311,100 in federal funds) for the state fiscal year beginning July 1, 2012 and ending June 30, 2013 in order to fund 300 more slots in the SCL waiver program.
 - (d) How much will it cost to administer this program for subsequent years? The biennium budget allocated \$7,650,100 in state funds to be matched with \$18,326,300 in federal funds for the state fiscal year beginning July 1, 2013 and ending June 30, 2014 to fund an additional 300 slots for that state fiscal year.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: